

**SRC APPROVED**

Date February 14, 2013  
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## State Records Committee Meeting

Division of Archives, Courtyard Meeting Room

January 10, 2013

Salt Lake City, Utah

Members Present: Lex Hemphill, Media Representative  
David Fleming, Private Sector Records Manager  
Doug Misner, History Representative  
Holly Richardson, Citizen Representative  
Patricia Smith-Mansfield, Governor's Designee  
Ernest Rowley, Elected Official Representative

Legal Counsel: Paul Tonks, Attorney General's Office  
Chiarina Glead, Attorney General's Office

Executive Secretary: Susan Mumford, Utah State Archives

Others Attending: Rosemary Cundiff, Archives staff  
Jason Knight, Archives staff  
Donald W. Meyers, *Salt Lake Tribune*  
Lorianne Ouderkirk, Archives staff  
Sandra J. Senn, petitioner  
Mindy Spring, Archives staff  
Lana Taylor, Department of Public Safety, respondent

### **Call to order: 9:35 a.m. by Lex Hemphill, Chair pro tem.**

Mr. Hemphill opened the meeting. He said that during the first meeting of the State Records Committee each odd year, the committee was required to select a new chair. The position rotated between representatives of a governmental entity and private representatives. Ms. Smith-Mansfield made a motion that the committee sustain Lex Hemphill as the new chair person. Ms. Richardson seconded the motion. A vote was taken. Mr. Fleming, Mr. Hemphill, Mr. Misner, Mr. Rowley, Ms. Richardson, and Ms. Smith-Mansfield voted in favor of the motion. The motion passed unanimously. Also in the first meeting of the year, the executive secretary for the Committee is selected. A motion was made by Ms. Smith-Mansfield to appoint Susan Mumford as the executive secretary. Mr. Fleming seconded the motion. A vote was taken. Mr. Fleming, Mr. Hemphill, Mr. Misner, Mr. Rowley, Ms. Richardson, and Ms. Smith-Mansfield voted in favor of the motion. The motion passed unanimously.

### **Hearing – Sandra Senn vs. Public Safety**

Mr. Hemphill explained the procedures of a hearing to the participants.

**Opening statement – petitioner**

Ms. Sandra Senn thanked the committee for hearing her appeal. She came from South Carolina to appear at the hearing. She said her friends and family members participated in some negative conduct while visiting Utah and one of them was arrested for driving under the influence (DUI). When she reviewed a video tape of the arrest, she questioned the stop itself. It happened after midnight in the downtown Park City area. The driving patterns of the vehicle were not anything that should have raised the attention of the trooper. She came to believe that the trooper had some employment issues in his history. She issued a GRAMA request, a subpoena, and a request for discovery. All of these were denied by Lana Taylor, Utah Department of Public Safety, counsel for the Utah Highway Patrol. Ms. Senn said although the case involved an underlying criminal incident the case was not related to an investigation into Highway Patrol Trooper, Lisa Steed. The case of Trooper Steed had been predominant in the newspapers. Ms. Senn said she had no knowledge of the Steed case until she began researching her case. Greg Skordas, attorney for Lisa Steed, was denied records from the Utah Highway Patrol. One denial to Ms. Senn's original GRAMA request had cited attorney work product; another had cited trade secrets. She suspected that neither of those were valid reasons for withholding a trooper's disciplinary history. She was referred to fourteen different sources for the records and followed through with GRAMA requests. She received some training records. She was told that she was required to exhaust her administrative remedies by appearing before the State Records Committee before pursuing her subpoena. The files may be exculpatory in the criminal case. It appeared that in the Steed case, Ms. Taylor shared records with the prosecutor, but vehemently opposed release of the records to the defense attorney. Based upon a sharing provision within GRAMA, it was said to be a misdemeanor if the defense was provided with the same records in the Steed case, even if they were exculpatory. She said where documents are known to exist; the prosecutor has a constitutional duty to assist in obtaining them. A judge could still decide if the records were admissible and possibly exculpatory.

**Opening statement – Lana Taylor, respondent for Public Safety**

Ms. Taylor said she represented her client, the Department of Public Safety. She said some of the statements made by Ms. Senn were not accurate. Ms. Taylor said there was still confusion about which records were sought by Ms. Senn. Under rule 16 of the criminal procedure code, if a defense attorney wanted records held by a governmental entity, she could submit a GRAMA request. Two other methods were available to obtain records. One was to ask the court to review the records pursuant to Utah Code 63G--2-207. The State Records Committee also had the authority to review the records *in camera* and decide if they should be released. Another way to obtain the records was to subpoena the court or to make a motion for discovery. Ms. Senn had not asked the court to review the requested records. Ms. Taylor said the committee could decide after an *in camera* review of the records. She said the Utah Highway Patrol received a subpoena for records. Numerous records existed, some were in the agency's possession but others were in the possession of other departments. Ms. Senn was referred to the agencies that held the records. As far as Ms. Taylor knew, Ms. Senn had not followed up with an appeal to the administrative level in those agencies. Records requested included personnel and training files, application for employment, disciplinary history, verbal or written complaints, and job evaluations.

**Testimony – petitioner**

Ms. Senn said that of the fourteen different records requests she made, only a few were refused because she had been overly broad in her description of the records requested. The records still in question were any that would include disciplinary history, letters of instruction, verbal or written complaints, reprimands, and job evaluations. She knew that government agencies called files by different names. She received training files. Job evaluations were still lacking. Mr. Lane, the man who had been arrested, needed the records in order to confront his accuser. In criminal proceedings, a lawyer must exhaust her recourse to obtain records through GRAMA. She said there was a supervisory file that someone other than Utah Highway Patrol (UHP ) should take a look at. No stone should be left unturned to prepare for court. Ms. Senn said that a trooper had no expectation of privacy as a public employee with the power to arrest. She asked the committee for relief by reviewing the denied records to decide if they should be released. She said the records could determine if the trooper had exhibited prior conduct similar to what she had observed in the video tapes she viewed of the day Mr. Lane was arrested. She wanted to exhaust her request through GRAMA before appearing in court. Ms. Senn said her only interest was this particular case. She offered to enter into a confidentiality order not to distribute the records further. A request to the Department of Human Resource Management was denied and not appealed. Ms. Senn said she was trying to appeal all the records denials through the records committee appeal and had not appealed to all fourteen agencies.

**Testimony – respondent**

Ms. Taylor said that based on the clarification presented, the UHP had some records responsive to the modified request. The Department of Human Resource Management (DHRM) released to Ms. Senn records from the trooper's personnel files including a disciplinary matter with a notice of intent to discipline and a letter imposing a suspension. No records were found of complaints by citizens. Job evaluations pursuant to 63G-2-302(2)(a), including performance evaluations, are private records. Some records were withheld. The reason for non-release was the information contained in the records. An employee's interest in maintaining the privacy of a personnel file outweighed the public interest in access. Ms. Taylor asked that committee uphold the department's classification of the denied records. DHRM hiring and firing records are governed by DHRM provisions. Highway Patrol and Internal Affairs divisions have separate records. The UHP records include a review of the trooper's reporting. Based on the section level finding, a recommendation was made and an internal affairs review was found to be in order. The Internal Affairs (IA) file contained policies and procedures. Other officers had been interviewed in the process of the investigation. If no disciplinary action was taken, those interview records remained private under Utah Code 63G-2-302. Incident reports were included in the denied records. The identification of a complaining witness was private information. Identifying personal information included the trooper's date of birth, physical description, home address, driver license number, motor vehicle information, and Social Security number. Ms. Taylor said she brought all the relevant records for the committee to review. She asked that a protective order be included if any records were to be released.

**Closing – petitioner**

Ms. Senn said she received the dash cam video, but also requested earlier videos involving the same trooper which were no longer available. The trooper said that the speed of the vehicle had caught his eye. Ms. Senn said the records request was an arduous process and that she paid over four hundred dollars for records so far. UHP policy and procedures should be public. She was denied some of the policies and was told they were classified as secret. The trooper involved had a pattern of problems. This was demonstrated by how closely he was supervised the night of the arrest. A five-year veteran was closely supervised by his superior for help with warrant procedures and with blood draw procedures. She asked that the committee look at the records to see if more could be released to her.

**Closing – respondent**

Ms. Taylor said the records denied were properly classified under Utah Code. The records clearly classified as “public” had been provided in response to the GRAMA request. The records still at issue which Ms. Taylor brought to the hearing were available to the committee for review. They included memoranda written by Highway Patrol personnel regarding the findings that were issued. The disclosure of the records, pursuant to Utah Code 63G-2-401, would only be appropriate if Ms. Senn’s interest in obtaining them were equal to or outweighed the interest the Highway Patrol had in maintaining the protected classification of the records and the trooper’s interest in maintaining his privacy. The troopers who were witnesses had their behavior examined and yet were not disciplined. Those records should remain private.

**Deliberation**

Ms. Smith-Mansfield made a motion to go into closed session to review the records. Mr. Rowley seconded the motion. A vote was taken. Mr. Fleming, Mr. Hemphill, Mr. Misner, Mr. Rowley, Ms. Richardson, and Ms. Smith-Mansfield voted in favor of the motion. The motion passed unanimously. The committee went into closed session.

**Closed session 10:43 – 10:57****Deliberation – continued**

Ms. Smith-Mansfield made a motion to return to open session. Mr. Fleming seconded the motion. A vote was taken. Mr. Fleming, Mr. Hemphill, Mr. Misner, Mr. Rowley, Ms. Richardson, and Ms. Smith-Mansfield voted in favor of the motion. The motion passed unanimously and the committee returned to open session. Ms. Mansfield made a motion that pursuant to Utah Code 63G-2-302(2)(a), performance evaluations, a portion of the records, are correctly classified as private. Mr. Rowley seconded the motion. A vote was taken. Mr. Fleming, Mr. Hemphill, Mr. Misner, Mr. Rowley, Ms. Richardson, and Ms. Smith-Mansfield voted in favor of the motion. The motion passed unanimously. Mr. Hemphill asked that the department provide a log of the denied records and make the records available for the members of the committee to view individually *in camera*. The hearing would then be continued until the February meeting. Mr. Fleming made a motion that the deliberation be continued to the February meeting and that the department produce a log of the items not produced to Ms. Senn. The parties had no objections. Records were returned to Ms. Taylor. Mr. Rowley seconded the motion. A vote was taken. Mr. Fleming, Mr. Hemphill, Mr. Misner, Mr. Rowley, Ms.

Richardson, and Ms. Smith-Mansfield voted in favor of the motion. The motion passed unanimously. Mr. Tonks said that an order of continuation would be sent out within seven days.

#### **Approval of minutes**

Mr. Fleming made a motion to approve the minutes of December 13, 2012, as corrected. Ms. Richardson seconded the motion. A vote was taken. Mr. Fleming, Mr. Hemphill, Mr. Misner, Mr. Rowley, Ms. Richardson, and Ms. Smith-Mansfield voted in favor of the motion. The motion passed unanimously. The minutes were approved.

#### **Membership changes and responses**

Mr. Tonks said that the state auditor, John Dougall, was looking at the potential of having someone outside his office as a designee. Mr. Hemphill referred to the service of Betsy Ross on the State Records Committee. She had become the institutional memory of the committee. Several members were stunned last month when she announced her retirement from the committee. There had been no time to prepare a response. The committee members were asked during the month to think about a suitable tribute. Mr. Hemphill suggested the committee draft an order to commemorate her service. The order could then be signed and framed and presented to Ms. Ross. Mr. Fleming made a motion that the committee memorialize the contribution of Ms. Betsy Ross over the last many years to the business of the committee and that an order be prepared for presentation at the next meeting. Mr. Rowley seconded the motion. A vote was taken. Mr. Fleming, Mr. Hemphill, Mr. Misner, Mr. Rowley, Ms. Richardson, and Ms. Smith-Mansfield voted in favor of the motion. The motion passed unanimously.

#### **Approval of retention schedule**

Ms. Rosemary Cundiff reported that the analyst section was still working with the Labor Commission and with the Department of Air Quality for clarification on two retention schedules. The schedules will be presented at the February meeting of the State Records Committee.

#### **Appeals received**

See attached report

#### **District Court cases**

See attached report

#### **Other business**

Ms. Smith-Mansfield said the next meeting should include on the agenda a discussion about providing a log and changing the number of days to produce an order from five to seven. The meeting was adjourned by acclamation. The next meeting was scheduled for February 14, 2013.

**STATE RECORDS COMMITTEE**  
**January 10, 2013**

**State Archives Building, Courtyard Meeting Room**  
**346 S. Rio Grande (450 West)**  
**Salt Lake City**

**AGENDA**  
**Call to Order 9:30 a.m.**

**BUSINESS**

**Selection of Committee Chair, action item**

**Selection of Executive Secretary, action item**

**Approval of December 13, SRC Minutes, action item.**

**Membership changes and responses, action item**

**Approval of retention schedule, action item**

**SRC appeals received**

**Cases in District Court**

**Other Business**

**HEARING**

**Sandra J. Senn vs. Utah Department of Public Safety.** Ms. Senn is appealing the denial of a Utah Highway Patrol Trooper's personnel and training files.

**ADJOURNMENT**

Next meeting scheduled for Thursday, February 14, 2013, at 9:30 a.m.

**SRC Appeals Received  
January 10, 2013**

1. **Clayton Simms vs. Utah Attorney General.** Mr. Simms is an attorney appealing the denial of investigation records of former Detective Ben Murray, the initial investigator on a case involving his client, Rikki Rodriguez. Hearing postponed until February
2. **Sandra Senn vs. Department of Public Safety.** Ms. Senn is appealing the partial denial of disciplinary, training, and personnel files of trooper David Wurtz. Hearing scheduled for January
3. **Troy Singleton vs. Syracuse City.** Mr. Singleton appealed the denial of resumes submitted to the city for the position of Chief of Police.
4. **Gregory Williams vs. UDC.** Mr. Williams had a list of grievances against corrections for the handling of requests. Is appealing two different issues—Board of Pardons notes and report of an incident written up by a staff member at the prison.
5. **Ken Cromar vs. City of Cedar Hills.** A new request for a hearing has been received from Mr. Cromar. He is appealing the partial denial of billing information for attorney work with the city. Scheduled for February
6. **Moses Shepherd vs. UDC.** Fee waiver for indigent inmate issue. Access to records not at issue.
7. **Ross George vs. UDC.** TMF 06 Manual request. Wait to respond until Robert Baker hearing.
8. **Edward Hammond vs. University of Utah.** Incomplete
9. **Mark Kimball vs. UDC.** Fee waiver denial for indigent inmates. Access to records not at issue.

## **January 2013 Records Committee Case Updates**

### **District Court Cases**

**Utah Transit Authority v. Janelle Stecklein**, 3<sup>rd</sup> District, Salt Lake County, Case No. 120908696, filed December 21, 2012.

**Current Disposition:** Answer to complaint filed on January 7, 2013. Answer not filed yet by Stecklein/Salt Lake Tribune.

**Granite School Dist. v. Salt Lake Tribune**, 3<sup>rd</sup> District, Salt Lake County, Case No. 120907897, filed November 26, 2012.

**Current Disposition:** Answer filed for Committee on December 18, 2012. The Tribune has filed a Motion to Dismiss on the basis that Granite School District filed an untimely appeal. Granite School District is opposing the motion to dismiss, but has also filed Motion to Enlarge the Time acknowledging an untimely filing and requesting the court to allow the complaint to be filed as timely.

**Lawrence v. Dept. of Public Safety**, 3<sup>rd</sup> District, Salt Lake County, Case No. 120907748, Judge Dever, filed November 19, 2012.

**Current Disposition:** Complaint filed on November 19<sup>th</sup>, served upon Committee on December 6<sup>th</sup>. Answer filed on behalf of the Committee on December 19, 2012.

**Utah Dept. of Workforce Services v. Guberev**, 3<sup>rd</sup> District, Salt Lake County, Case No. 120907203, Judge Faust, filed October 23, 2012.

**Current Disposition:** Petition for review filed by DWS. Answer filed on behalf of the State Records Committee on November 19, 2012.

**Salt Lake City Corp. v. Mark Haik**, 3<sup>rd</sup> District, Salt Lake County, Case No. 120905667, Judge Kelly, filed August 21, 2012.

**Current Disposition:** Complaint filed by Salt Lake City Corp., answer and counterclaim filed by Haik on September 6, 2012. A motion to dismiss the Committee as a party (not an appeal from a decision by the Committee) was filed on December 5, 2012. Motion will probably be unopposed resulting in a probable granting of the motion.

**Danysh v. Unified Police Dept.**, 3<sup>rd</sup> District, Salt Lake County, Case No. 120904327, Judge Quinn, filed June 22, 2012.

**Current Disposition:** October 9, 2012, Mr. Danysh filed a "Petition to Withdraw Petition" with the Court claiming that since the Court is unable to waive his court filing fee pursuant to Utah Code, he needs to withdraw his petition. On November 19, 2012, Court granted petition to withdraw petition dismissing the case.

**Utah Dept. of Human Services v. Wilson**, 3<sup>rd</sup> District, Salt Lake County, Case No. 120903186, Judge Kelly, filed May 10, 2012.

**Current Disposition:** Motion to amend complaint filed by Human Services granted on November 29, 2012.



**Salt Lake City v. Jordan River Restoration Network**, 3<sup>rd</sup> Judicial District, Salt Lake County, Case No. 100910873, Judge Stone, filed June 18, 2010.

**Current Disposition:** Only pleading filed during the past six months was a notice of appearance of new counsel on behalf of Jordan River.

### **Appellate Court Cases**

**Attorney General Office. v. Schroeder**, 3<sup>rd</sup> District, Salt Lake County, Case No. 110917703, Judge Kelly, filed Sept. 20, 2011.

**Current Disposition:** Trial held on October 19, 2012. Appeal filed by Schroeder requesting matter to be heard by the Utah Supreme Court. AG counsel has been assigned to represent the AG's office, Paul Tonks assigned to represent the Committee.